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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. No. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC.)
D/B/A TRUCK SERVICE,)
Plaintiff)
vs.)
CATERPILLAR, INC.,)
Defendant)

AUDIOVISUAL DEPOSITION OF JOSEPH M. HOWARD, JR., a witness called on behalf of the Plaintiff, pursuant to Massachusetts Rules of Civil Procedure, before Susan E. Wilson, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Law Offices of Campbell, Campbell, Edwards & Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, May 3, 2005, commencing at 9:43 a.m.

C.J. REPORTING
A5 Colonial Drive, No. 7
Andover, Massachusetts 01810
978.409.9090
www.cjreporting.com

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APPEARANCES:

NANCY M. REIMER, ESQUIRE
CHRISTIAN G. SAMITO, ESQUIRE
Donovan Hatem, LLP
Two Seaport Lane
Boston, MA 02210
617-406-4500
On Behalf of the Plaintiff.

JOHN GRUNERT, ESQUIRE
Campbell, Campbell, Edwards & Conroy
One Constitution Plaza
Boston, MA 02129
617-241-3000
On Behalf of the Defendant.

Also Present:

William Barton, Videographer

DEONENT Joseph M. Howard, Jr.

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1 Demand, and I'm going to hand a copy to
 2 your counsel for her convenience because
 3 I have some questions about this
 4 document and some of the averments in
 5 it.

6 Before I get to those
 7 specific averments, let me ask you
 8 whether there came a time in early 1999
 9 when you reached a conclusion that
 10 Trans-Spec should acquire some new
 11 trucks?

12 A. **Just normal business.**

13 Q. So is the answer that sometime in 1999,
 14 you did reach a conclusion that
 15 Trans-Spec should acquire some new
 16 trucks?

17 A. **We purchase trucks every year.**

18 Q. Is the answer that sometime in early
 19 1999, you reached the conclusion that
 20 Trans-Spec should acquire some trucks?

21 A. **Some more trucks.**

22 Q. When was it that you decided that
 23 Trans-Spec should go into the
 24 marketplace in 1999 and acquire some

1 Q. How many?

2 A. **At which occasion?**

3 Q. Let me ask a different question. During
 4 the year 1999, did you dispose of any of
 5 those 44 trucks, you meaning Trans-Spec?

6 A. **Yes.**

7 Q. How many of those 44 trucks did
 8 Trans-Spec dispose of during the year
 9 '99?

10 A. **21.**

11 Q. Who did you sell them to? Who did
 12 Trans-Spec sell them to?

13 A. **Minuteman Trucks.**

14 Q. Were those 21 trucks, in effect, traded
 15 in as part of the purchase price for the
 16 trucks that are involved in this case?

17 A. **Yes.**

18 Q. Were any of those trucks equipped with
 19 Caterpillar engines?

20 A. **Yes.**

21 Q. What kinds of Caterpillar engines were
 22 they equipped with?

23 A. **3176, C-12, 3406C. I believe that was**
 24 it.

1 trucks?

2 A. **I believe it was March.**

3 Q. March. And at that time when you
 4 reached that conclusion, how many trucks
 5 did Trans-Spec own?

6 A. **Approximately 44. And maybe 80**
 7 **trailers, 90 trailers, somewhere in**
 8 **there.**

9 Q. Of the approximately 44 trucks, were
 10 some of those pickup trucks or light-
 11 duty trucks?

12 A. **No.**

13 Q. Those were 44 trucks of a type designed
 14 to haul cargo of some type?

15 A. **Yes.**

16 Q. When you decided that you were going to
 17 acquire some additional trucks in 1999,
 18 was it your plan to dispose of some of
 19 the 44 trucks that you had?

20 A. **Yes.**

21 Q. In fact, after you acquired the trucks
 22 that are involved in this case, did you
 23 dispose of some of those 44 trucks?

24 A. **Yes.**

1 Q. How many of those 21 trucks were
 2 equipped with engines that were not
 3 Caterpillar engines?

4 A. **I'm not sure any of them were.**

5 Q. How many of those trucks were equipped
 6 with Caterpillar C-12 engines?

7 A. **I have to correct that. C-12 engines we**
 8 **held on to for another couple of years.**
 9 **3176 primarily, and some 3406C engines.**

10 Q. Is it your corrected testimony that of
 11 the 44 trucks that Trans-Spec owned in
 12 early 1999, some of those trucks were
 13 equipped with C-12 engines and none of
 14 the trucks equipped with C-12 engines
 15 were disposed of during the year 1999?

16 A. **Correct.**

17 Q. Of the 44 trucks that Trans-Spec owned
 18 in early 1999, how many of them were
 19 equipped with C-12 engines?

20 A. **Repeat the question.**

21 Q. Of the 44 trucks that Trans-Spec owned
 22 in early 1999, how many of them were
 23 equipped with C-12 engines?

24 A. **Seven.**

1 Q. Now, turning to your conversation with
 2 Mr. Biglizzi, other than telling him
 3 that he would come up with some numbers
 4 for you, did Mr. Biglizzi tell you
 5 anything else during that conversation?
 6 A. **I don't believe so.**
 7 Q. Other than telling Mr. Biglizzi that
 8 you wanted 22 trucks of the same kind
 9 you had already and that you wanted to
 10 trade 21 trucks, did you give him any
 11 information concerning Trans-Spec's
 12 needs during that first conversation
 13 with Mr. Biglizzi?
 14 A. **I basically told him what trucks we have
 15 and I want to replace the trucks with
 16 specifications similar to what we have.**
 17 Q. Did you tell him anything else?
 18 A. **No. I might have changed a few specs.**
 19 Q. Do you remember whether you did or not?
 20 A. **I gave him a choice of two models along
 21 with Mr. Gustufson. One was the FLD
 22 112SD and the other was an FL 112. I
 23 gave him a choice of C-12, 60 Series
 24 Detroit, or M11 Cummins. I wanted a**

1 as to what you wanted on these trucks?
 2 A. **Yes.**
 3 Q. With respect to the two model trucks
 4 that you suggested to them, had you gone
 5 out and obtained any documentary-type
 6 information concerning those model
 7 trucks?
 8 A. **No. We had both.**
 9 Q. With respect to the three engine types
 10 that you proposed to Mr. Gustufson and
 11 Mr. Biglizzi, had you gone out and
 12 obtained any documentary information of
 13 any type concerning any of those three
 14 engine types?
 15 A. **No. Not specifically, no.**
 16 Q. Before you spoke with Mr. Gustufson and
 17 Mr. Biglizzi, what research or
 18 inquiries had you carried out to learn
 19 about the characteristics of the three
 20 engine types you mentioned, namely, the
 21 C-12, the 60 Series Detroit or the M11
 22 Cummins?
 23 A. **Basically, history of other companies.**
 24 Q. What do you mean "history of other

34
 1 hundred percent Rockwell components, a
 2 10-C transmission, 46,000 pound rear
 3 ends, 12,000 pound front end, 7/16
 4 frame.
 5 Q. You mean 7/16-inch frame?
 6 A. **7/16-of-an-inch, right. 185-inch
 7 wheelbase, dark interior with no rugs.
 8 I can go on and on and on about the
 9 little things on the truck, but those
 10 are the major components on this truck.**
 11 Q. In the first conversation you had with
 12 Mr. Gustufson when you called him up and
 13 said you wanted to acquire 22 new
 14 trucks, in addition to that, you gave
 15 him the information you have just
 16 recounted?
 17 A. **Yes.**
 18 Q. And you gave the same information to Mr.
 19 Biglizzi?
 20 A. **Yes.**
 21 Q. Were you working from some document in
 22 this conversation?
 23 A. **No.**
 24 Q. So you had this information in your head

36
 1 companies"?
 2 A. **Other companies using these vehicles,
 3 using competitive vehicles with
 4 different power trains in them.**
 5 Q. How had you obtained that information?
 6 A. **We had one of the largest repair
 7 facilities around besides our trucking
 8 company, and we fix -- we have 3600
 9 customers so we have all the information
 10 that we need.**
 11 Q. So the source of the information
 12 concerning other companies' experience
 13 with those three engine types was the
 14 truck repair business that Trans-Spec
 15 operated?
 16 MS. REIMER: Objection.
 17 A. **Correct.**
 18 Q. Was there any source other than what you
 19 learned from those customers?
 20 A. **We also had all of these engines
 21 ourselves, all three of these engines
 22 ourselves.**
 23 Q. Other than the information from
 24 customers of the truck repair business

1 and from your own experience with
 2 engines of these types, was there any
 3 other source of information that you had
 4 about those three engine types before
 5 you called up Mr. Gustufson and Mr.
 6 Biglizzi and gave them these
 7 requirements that you have described?

8 **A. We have -- I have met all the
 9 representatives of all the different
 10 companies.**

11 **Q.** Had you, before March of 1999, had any
 12 specific discussions with
 13 representatives of Cummins Engine
 14 Company concerning the M11 engine?

15 **A. Yes.**

16 **Q.** And where had that conversation or those
 17 conversations taken place?

18 **A. Cummins North Atlantic in Dedham,
 19 Massachusetts.**

20 **Q.** Who had you discussed them with at that
 21 location?

22 **A. The sales rep at that time was Walter
 23 Brisco. The owner was Dave Letz.**

24 **Q.** How do you spell Dave's last name?

1 **A. L-E-T-Z, I believe.**

2 **Q.** With respect to the 60 Series Detroit
 3 engines, who had you talked to about
 4 those engines?

5 **A. Walter Brisco.**

6 **Q.** Also at Cummins North Atlantic?

7 **A. No. He left there and went to Power
 8 Products in Wakefield, Massachusetts.**

9 **Q.** Who had you discussed the C-12 engine
 10 with before March of 1999?

11 **A. Harry Calderbank and Al Cardoza.**

12 **Q.** Before March 1999, had either Mr.
 13 Calderbank or Mr. Cardoza given you any
 14 documentary information concerning C-12
 15 engines?

16 **A. Yes.**

17 **Q.** What information had they given you?

18 **Q.** What documents had they given you?

19 **A. Information on torque rise, horsepower.**

20 **Q.** They had given you that information in
 21 documentary form?

22 **A. Yes.**

23 **Q.** Does Trans-Spec still have the
 24 information that they gave you in

1 that you can identify?

2 **A. I think they were called brochures.**

3 **Q.** Just C-12 engine brochures?

4 **A. Yes.**

5 **Q.** When the C-12 engine would be updated in
 6 some fashion, he would give you a
 7 brochure and say there has been an
 8 update on the C-12 engine?

9 **A. I don't believe there was an update on
 10 C-12. When they come up with new
 11 products, he would explain the new
 12 products to me.**

13 **Q.** Did Mr. Calderbank give you brochures
 14 relating to C-12 engines on more than
 15 one occasion before March of 1999?

16 **A. Yes.**

17 **Q.** How often?

18 **A. Actually, first, he told us about the
 19 engine.**

20 **Q.** That's fine. But how often did he give
 21 you brochures concerning the C-12 engine
 22 before March 1999?

23 **A. They only have so many brochures.**

24 **Q.** How often did he give you brochures

1 I'm a very faithful person, and I really
 2 had to take all of this under
 3 consideration.

4 Q. What research did you do the next day in
 5 order to learn that Hartford was not
 6 within Southworth Milton's district?

7 A. **I believe I called Harry Calderbank.**

8 Q. What did you say to him and what did he
 9 say to you?

10 A. **I was -- at that point, I think I had
 11 called Harry on concessions of the
 12 multiple purchase of Caterpillar engines
 13 versus the M11 Cummins. And Harry
 14 informed me that -- and I'm not even
 15 sure if this was before or after the
 16 conversation with Kevin Holmes, but he
 17 informed me that Hartford wasn't in his
 18 district, that I would have to deal with
 19 New Haven.**

20 Q. Did he tell you the company that you
 21 would have to deal with if you bought
 22 these trucks in Connecticut?

23 A. **Well, I know the Caterpillar dealer in
 24 New Haven. I can't even think of the**

1 **warranty, the cost of warranty, the
 2 discounting and, of course, who would
 3 stand behind their warranty the best.**

4 Q. In the conversation with Mr. Calderbank
 5 comparing the Cummins M11 and the C-12,
 6 what did he tell you about relative
 7 performance?

8 A. **He showed me comparison charts between
 9 the two engines, economy charts. The --**

10 Q. I'm sorry. I interrupted you. Finish
 11 your answer.

12 A. **I was primarily done. I wanted it to be
 13 Caterpillar.**

14 Q. Did you keep those charts that he showed
 15 you?

16 A. **No. No. Not that long.**

17 Q. What do you remember them showing that
 18 was of interest to you?

19 A. **Torque curve, actual power, gross
 20 horsepower, grade ability versus
 21 economy. One of the big things that he
 22 was selling was the cleanliness of the
 23 Caterpillar versus the Cummins. I
 24 believe he said the Cummins is the --**

1 name.

2 Q. H.O. Penn?

3 A. **Yes. That is what it was.**

4 Q. Did Mr. Calderbank tell you that if you
 5 purchased these trucks from the
 6 Connecticut dealership that you would
 7 have to deal with H.O. Penn in terms of
 8 servicing for the engines?

9 A. **Yes. Or warranty for the engines or
 10 concessions for the engines. Anything
 11 about the engine, he couldn't help me.
 12 He could fix them. He could fix
 13 anybody's Caterpillar, but he couldn't
 14 offer any assistance on the financial
 15 arrangement.**

16 Q. You mentioned having talked with Mr.
 17 Calderbank about concessions on
 18 purchasing multiple engines relative to
 19 the Cummins engine. Tell me about that
 20 conversation. What did you say and what
 21 did he say?

22 A. **I really don't recall the exact
 23 conversation, but it was about
 24 performance, about weight, about the**

1 **M11 is the dirtiest engine on the
 2 market.**

3 Q. Does that mean it has high emissions?

4 A. **I think, internally, soot. Soot in the
 5 oil, if you do an oil analysis.**

6 Q. Anything else that you remember him
 7 telling you about relative performance
 8 of the Cummins engine and the C-12?

9 A. **He knew I wanted to be talked out of it.
 10 So it really wasn't a heated
 11 conversation of any kind. I wanted to
 12 be talked out of it. I wanted him to
 13 match what they were trying to sell me.**

14 Q. Have you given me your best memory of
 15 the information that Mr. Cummins gave
 16 you in the conversation that you had
 17 with him comparing the M11 Cummins
 18 engine to the C-12?

19 MS. REIMER: Objection
 20 as to form.

21 A. **I didn't quite understand it.**

22 MS. REIMER: You got the
 23 wrong name in there.

24 Q. Have you given me your best and most

1 complete memory of your conversation you
 2 had with Mr. Calderbank comparing the
 3 Cummins engine and the C-12 engine?
 4 A. Yes.
 5 Q. He also talked to you about relative
 6 weights of the two engines?
 7 A. Yes.
 8 Q. C-12 was lighter?
 9 A. No.
 10 Q. C-12 was heavier?
 11 A. He said they were the same. There was
 12 about 60 pounds difference.
 13 Q. What did he tell you about relative
 14 warranties?
 15 A. They were the same.
 16 Q. Did he describe the warranties other
 17 than just telling you that they were the
 18 same?
 19 A. I believe he called it a serious
 20 nucleus, and he gave us literature
 21 showing everything that it covered.
 22 Q. Was so-called serious nucleus coverage
 23 something that you had on other
 24 Caterpillar engines that you already

1 you if that is the serious nucleus
 2 coverage that you understood Mr.
 3 Calderbank to be talking about. It's a
 4 two-sided document.
 5 A. All I really remember is I did see a
 6 list of numbers on a page, and this
 7 would have been explained to me, and
 8 then Andy would have -- he is my
 9 technical guy -- he would have taken it
 10 from there.
 11 Q. Andy Lind?
 12 A. Yes.
 13 Q. The document that I have shown you that
 14 says on the front of it On Highway
 15 Vehicle Engine Extended Service
 16 Coverage, is that a form of document
 17 that Mr. Calderbank showed you in
 18 connection with these conversations he
 19 was having with you concerning --
 20 A. He never showed me a document.
 21 Q. You had seen a document of this type
 22 before in connection with your other
 23 Caterpillar engines, correct?
 24 A. I don't remember ever seeing it. I

1 owned?
 2 A. Everything, yes.
 3 Q. Technically speaking, it was an extended
 4 service contract that you purchased,
 5 correct?
 6 A. Yes.
 7 Q. When I say that you purchased, either
 8 you purchased it by paying money or you
 9 got it as part of the overall
 10 transaction whereby you purchased the
 11 truck with the Caterpillar engine in it?
 12 A. Yes. Had a figure -- had a cost figure
 13 on it. If you didn't want it and wanted
 14 the money, I don't think they would give
 15 it to you. No. It did have a cost
 16 figure. It had a value.
 17 Q. Let me just show you a document. What I
 18 have got is a package of documents
 19 contained with a letter from your
 20 attorneys. I'm just going to hand it to
 21 you in that form. But I will ask you to
 22 look at the third page of the document,
 23 third page, including the first page,
 24 which is your attorney's letter, and ask

1 possibly could have, but I don't recall
 2 it.
 3 Q. In the conversation that you had with
 4 Mr. Calderbank concerning the warranty,
 5 relative warranties as to the Cummins
 6 engine or the C-12 engine, although he
 7 didn't show you the document, did he
 8 tell you what the coverage would be?
 9 A. Yes, he did.
 10 Q. What did he say?
 11 A. He said it would be a 500,000 mile
 12 extended warranty.
 13 Q. Did he tell you anything else?
 14 A. He told me what it would cover and what
 15 it wouldn't cover.
 16 Q. What did he tell you on that subject?
 17 A. All the heavy parts after a certain
 18 time. I don't believe it would cover --
 19 on the extended it wouldn't cover a
 20 turbocharger or injector or an ECM or
 21 something like that, but as far as the
 22 internal combustion parts, pistons,
 23 valves, crankshaft, timing gears,
 24 totally everything.

1 Holmes' Tri-State nor from Mr.
 2 Biglizzi's company, correct?
 3 MS. REIMER: Objection.
 4 A. **Correct.**
 5 Q. What next occurred in connection with
 6 your effort to acquire these 22 trucks?
 7 A. **Coincidentally, we had a visit from a**
salesman that once worked for a
Peterbilt dealer in New Hampshire that
now worked for Minuteman Trucks. He
just happened to walk in the door.
 12 Q. Is that Mr. Medbery?
 13 A. **Donald Medbery, yes. I'm not sure if he**
had heard of the deal or what we were
looking for or if he just coincidentally
walked in, but he had ran into Andy, and
Andy called me. I wasn't there, and he
told me that -- I think Andy told him
the deal between -- the possible deal
that we had with Lindy Biglizzi, and he
said, "I'll match it."
 22 Q. What did you say?
 23 A. **Well, I wasn't there, so I said, "Let's**
get together," and so we -- that's when

1 Q. What did he tell you he could do for
 2 you, or would do for you?
 3 A. **Match the deal.**
 4 Q. So you described the offer that you had
 5 for Mr. Biglizzi, and he said Minuteman
 6 would match that deal?
 7 A. **Yes.**
 8 Q. What other information was exchanged in
 9 that meeting?
 10 A. **I don't recall. I think that was**
 11 **primarily it.**
 12 Q. Did he tell you what specific equipment
 13 would be on the Sterling trucks that you
 14 were talking about buying?
 15 A. **Whatever would be on the other ones**
 16 **would be on -- it would be the same**
 17 **equipment on either.**
 18 Q. Did you discuss engines with him
 19 specifically?
 20 A. **There's different people you discuss**
 21 **different things with. Mr. Medbery**
 22 **isn't a mechanic.**
 23 Q. Did you discuss engines with him?
 24 A. **What I would like in a truck, yes.**

1 **I started speccing out Sterlings, which**
were an entirely different truck.
 3 Q. When you say you started speccing them
 4 out, what did you do to spec out the
 5 Sterlings?
 6 A. **I had to tell him basically the same**
specs that I had told all the other
dealers.
 9 Q. So you were sitting with him in your
 10 office and you gave him a description of
 11 your needs or desires, just as you had
 12 with Mr. Gustufson, Mr. Biglizzi and
 13 the others?
 14 A. **I think he came over -- he came to my**
house and we sat in a private -- where I
would do a lot with different people, if
I didn't want to be bothered.
 18 Q. You met with him at 7 Cristo Lane?
 19 A. **Yes.**
 20 Q. In any event, this was a face-to-face
 21 meeting?
 22 A. **Yes.**
 23 Q. Did he bring any documents with him?
 24 A. **I don't recall that.**

1 Q. What did you tell him you wanted in
 2 terms of engines? Did you say you
 3 wanted a C-12 engine, or did you give
 4 him the three options you gave the other
 5 people?
 6 A. **I believe I gave him the three options.**
 7 Q. Did he tell you specifically which of
 8 those options Minuteman would include in
 9 its offer?
 10 A. **They were, I believe, pushing**
 11 **Caterpillar.**
 12 Q. Mr. Medbery was?
 13 A. **He appeared to be. I'm not sure if he**
 14 **did or he didn't, but he seemed to like**
 15 **the Caterpillar.**
 16 Q. Do you remember what he told you about
 17 it?
 18 A. **Well, when you are dealing with engine**
 19 **or component manufacturers when you are**
 20 **purchasing a truck, as far as discounts**
 21 **or concessions, you have to go through**
 22 **the salesperson who goes through the**
 23 **manufacturer. Then the manufacturer, he**
discounts a truck based on how many you

1 are going to purchase.

2 And after they are all
3 done, then, you know, I can do my magic.
4 Or it isn't magic, but I can do my thing
5 and try to get a little more.

6 Q. I don't understand what you mean by
7 that.

8 A. **Well, come out with a price of a truck
9 with one component versus, for example,
10 a Rockwell transmission versus an Eaton
11 transmission. They are different
12 prices. They are close. Everybody is
13 competitive, but a Cummins versus a
14 Detroit versus a Caterpillar engine on
15 price, there's a lot of considerations.**

16 And the biggest thing is
17 warranty, but they are all pretty much
18 the same. Another thing is weight. And
19 basically, an engine is only as good as
20 the dealer, whether it be the engine
21 dealer or the truck dealer, selling the
22 product. And I wanted Caterpillar for
23 that reason.

24 I had already been

1 through Cummins a few times, and there
2 were new people which seemed to be
3 better, but we have a history with
4 Caterpillar. We wanted the Caterpillar.

5 Mr. Medbery was given
6 that information and he tried to obtain
7 pricing. Even though he said he would
8 match it, of course, I wanted him to do
9 better, so he attempted to do better.
10 And he had to get everything approved
11 from the owners. He couldn't say, yes,
12 this is the deal, sign up \$1.6 million,
13 so we had to go through all the
14 rigamarole, you know, through it again.

15 And the trucks were
16 totally different, different models,
17 different -- like the BC on a Sterling,
18 it's 122 inches. And a BC on a
19 Freightliner is 120 or 112. So we had
20 to take into our -- for our specific
21 use, we had to look at the truck
22 entirely different.

23 Q. What is the BC?

24 A. **The nose that sticks out beyond the cab.**

1 Q. When you finished your meeting with Mr.
2 Medbery at your home where you and he
3 discussed these trucks and you told him
4 to match the offer you had or make a
5 better offer, did he leave you with any
6 documents? Did he leave you with a
7 proposal?

8 A. **I don't recall.**

9 Q. After that meeting what was your next
10 communication with Mr. Medbery or anyone
11 else from Minuteman concerning this
12 transaction?

13 A. **I think the owner came to see me.**
14 Q. What was his name?

15 A. **Richard Wicher.**

16 Q. Did he come see you at your home or some
17 other business location of Trans-Spec?

18 A. **My business location.**

19 Q. What business locations did Trans-Spec
20 have back at that time other than 7
21 Cristo Lane?

22 A. **307 Hartford Turnpike, Shrewsbury.**

23 Q. Did it have any others?

24 A. **The 22 Eskow Road was the main one in**

1 **Worcester.**

2 Q. Did it have any others?

3 A. **No. It owns other property, but as far
4 as occupying it, that's it.**

5 Q. What other property did Trans-Spec own
6 in 1999?

7 A. **103 Creeper Hill Road in North Grafton.**

8 Q. But it didn't have a place of business
9 at that location?

10 A. **No. It was a previous terminal that we
11 had outgrown.**

12 Q. What other -- let me put it this way.
13 What other property did Trans-Spec own
14 that it was using in its business back
15 in 1999?

16 A. **21 Eskow Road, 22 Eskow Road.**

17 Q. 22. Are they across the street from
18 each other?

19 A. **Yes.**

20 Q. So were its business locations back at
21 that time the Cristo Lane address, the
22 307 Hartford Turnpike, and 21 and 22
23 Eskow Road?

24 A. **Yes.**

1 Q. In any event, Mr. Wicher came to see you
2 at 22 Eskow Road?
3 A. Yes.
4 Q. Between Mr. Medbery's visit to you where
5 Mr. Medbery made his pitch and when Mr.
6 Wicher came to see you at Eskow Road,
7 did you talk with Mr. Calderbank about
8 the transaction?
9 A. Not at that time.
10 Q. Did you talk with anybody from
11 Southworth about the transaction between
12 when Mr. Medbery first came to see you
13 and when Mr. Wicher came to see you?
14 A. I did. After I met Mr. Wicher, I did.
15 Q. I'm asking now about the period between
16 when you first met Medbery and when you
17 first met Mr. Wicher, did you speak with
18 anyone from Southworth during that
19 period of time about this transaction?
20 A. I don't recall.
21 Q. About how much time passed between
22 Medbery's visit and Wicher's visit?
23 A. I don't recall that either.
24 Q. Was it a matter of days or weeks?

1 A. I think it was days.
2 Q. Did anybody come with Mr. Wicher?
3 A. I believe he brought his parts man with
4 him.
5 Q. Who was that?
6 A. I don't recall.
7 Q. Did anyone participate with you in this
8 meeting with Mr. Wicher and his parts
9 man?
10 A. Andy.
11 Q. Mr. Lind?
12 A. Yes.
13 Q. Tell me what was said at that meeting?
14 A. We just listened.
15 Q. What did Mr. Wicher and his parts man
16 tell you?
17 A. How they could deliver parts every day,
18 how we could help them with the
19 warranty, small issues on trucks. The
20 windshield wiper motor, you wouldn't
21 want to have to drive a truck 50 miles
22 to have a windshield wiper switched or a
23 power window switched, so they would
24 sublet back to us.

1 Q. Trans-Spec could do some of the warranty
2 work itself and get reimbursed for it?
3 A. Right.
4 Q. What else did they tell you as you
5 listened?
6 A. Well, they wanted to sell us parts as
7 much as they wanted to sell us trucks.
8 We purchased a lot of parts.
9 Q. When you said they wanted to sell you
10 parts, you mean they wanted to sell you
11 parts for the trucks that you already
12 had?
13 A. No. The whole company. We buy possibly
14 \$50,000 a month in parts.
15 Q. They wanted to sell you parts to use in
16 the truck repair portion of your
17 business?
18 A. Yes.
19 Q. So this was not just a pitch to sell you
20 22 Sterling trucks, it was a pitch to
21 sell you a lot of other product as well?
22 A. Yes.
23 Q. What did they tell you about the
Sterling trucks they were proposing to

1 sell beyond what you told me about
2 helping with the warranty and about how
3 they could deliver parts every day?
4 A. It was primarily just price, pricing
5 issue on that. A truck is a component
6 vehicle. It has a cab, whether it be
7 the Freightliner or International or
8 Kenworth or Peterbilt, and then it has
9 similar frame rails which could be by
10 different manufacturers, but they are
11 the same. They are two straight rails.
12 And then they put front
13 axles which are either Eaton or
14 Rockwell, a transmission either could be
15 Eaton or Rockwell again, maybe Spicer,
16 and rear ends could be two or three
17 different manufacturers but it's all
18 components. But it's the same thing.
19 Q. Did you discuss with Mr. Wicher the
20 components that they would put on these
21 Sterling trucks that you were talking
22 about buying?
23 A. No. Not really.
24 Q. Not at that meeting at least?

1 A. No.
 2 Q. What specifications for the trucks did
 3 Mr. Wicher propose to you at that
 4 meeting?
 5 A. **Mr. Wicher is not a nuts-and-bolts-type**
 6 **guy. He talks numbers. Numbers and**
 7 **service.**
 8 Q. Is the answer that there were no
 9 specific specifications for the trucks
 10 presented to you at that meeting?
 11 A. Yes.
 12 Q. What happened next after that meeting in
 13 terms of your pursuing the purchase of
 14 these 22 trucks?
 15 A. **I believe his brother came to see us**
 16 **next.**
 17 Q. What was his name?
 18 A. **Bill Wicher.**
 19 Q. Did Bill Wicher bring anyone with him?
 20 A. **I believe maybe the parts guy came with**
 21 **him and not with Richard Wicher.**
 22 Q. Did anyone else come with him?
 23 A. **I'm not sure if Medbery was probably**
 24 **with him. I'm not sure of that.**

1 Q. From Trans-Spec's side, was it you and
 2 Mr. Lind again?
 3 A. Yes.
 4 Q. Was anyone else at the meeting?
 5 A. I don't believe so.
 6 Q. Between meeting with Richard Wicher and
 7 Bill Wicher, what communications did you
 8 have with Southworth, either Mr.
 9 Calderbank or any other Southworth
 10 employee, concerning this transaction?
 11 MS. REIMER: Objection.
 12 A. I really don't recall, but it was -- I
 13 did fill Harry Calderbank in about the
 14 Sterling trucks.
 15 Q. What did you tell him?
 16 A. I just told him that I was looking at
 17 Sterlings because of the political
 18 position that I was put in and I didn't
 19 want to hurt anybody. And Harry thought
 20 that was great. He said they are good
 21 people. It's a good dealer.
 22 Q. Talking about Minuteman?
 23 A. Yes.
 24 Q. Did Mr. Calderbank say anything else?

1 A. Not really.
 2 Q. Tell me what happened in the meeting
 3 with Bill Wicher and maybe Mr. Medbery,
 4 maybe the parts man, you and Mr. Lind?
 5 A. Well, Bill Wicher is a parts guy. He is
 6 not a nut-and-bolt-type guy that you can
 7 ask him differences in products. He can
 8 tell you what a product is going to
 9 cost, what he can do for you, the
 10 computer system that you are required to
 11 have a -- to deal with them on the order
 12 over the Internet and that was primarily
 13 it.
 14 Q. He was there to talk to you about the
 15 proposal that Minuteman become a parts
 16 supplier to Trans-Spec?
 17 A. Right. He was a dealer for Alliance
 18 which was part of -- a subsidiary of
 19 Freightliner. And it's a parts network
 20 that sells -- I don't know if it's
 21 worldwide, but certainly the biggest in
 22 the nation now, and we could actually --
 23 through this system, we could order
 24 parts directly from Alliance.

1 Q. Setting aside the discussion about his
 2 desire to become a parts supplier to
 3 Trans-Spec, what conversation about
 4 these specific 22 trucks that you were
 5 thinking about buying occurred at that
 6 meeting?
 7 A. I don't recall, if any.
 8 Q. Did Mr. Wicher or any of the other
 9 Minuteman employees present you with any
 10 documents concerning the trucks that
 11 they were talking about selling you?
 12 A. I don't recall. I had documents on the
 13 truck itself which I did like.
 14 Q. Does Trans-Spec still have those
 15 documents?
 16 A. Not from Minuteman, no.
 17 MS. REIMER: John.
 18 MR. GRUNERT: This would
 19 be a good time to take a break anyway so
 20 let's go off and you can rewind.
 21 THE VIDEOGRAPHER: The
 22 time is approximately 11:32 and we are
 23 off the record.
 24 (Recess taken.)

1 THE VIDEOGRAPHER: We
 2 are on the record. The time is
 3 approximately 11:43. The deposition of
 4 Mr. Joseph Howard continues on tape two.

5 Q. Sir, up until the date of the meeting
 6 that we were talking about with Bill
 7 Wicher and maybe Mr. Medbery and you and
 8 Mr. Lind, up until that point in time,
 9 the people that you had talked with
 10 about the C-12 engines and what you
 11 could get in terms of a deal for the
 12 C-12 engines had really been Mr.
 13 Calderbank, correct?

14 A. **Correct.**

15 Q. You hadn't discussed that subject with
 16 anyone else from Caterpillar or from
 17 Southworth, correct?

18 A. **Correct.**

19 Q. After the meeting with Bill Wicher where
 20 mostly you talked about Minuteman's
 21 desire to become a parts supplier to
 22 Trans-Spec, what was the next event in
 23 Trans-Spec's process of obtaining these
 24 22 trucks it wanted?

1 Q. I take it then that you and Mr. Lind
 2 spent some significant time together
 3 talking about what the detailed
 4 specifications for these Sterling trucks
 5 that you wanted to buy should be; is
 6 that correct?

7 A. **Not -- yeah. I mean, not every day. We
 8 probably had half a dozen five-minute
 9 conversations.**

10 Q. Understood. But you were working with
 11 Mr. Lind on this project to spec out
 12 these Sterling trucks in detail,
 13 correct?

14 A. **Yes.**

15 Q. And you mentioned sitting in trucks.
 16 Did you and Mr. Lind, or both of you, go
 17 and look at some exemplar Sterling
 18 trucks?

19 A. **No.**

20 Q. So you had brochures and pictures and
 21 information for Sterling trucks that you
 22 were working from; is that correct?

23 A. **No.**

24 Q. How did you know where the window crank

1 A. **That's a good question. I really -- I
 2 think at that point we had to -- no, we
 3 didn't arrange financing at that point.
 4 I think just basically spec them out and
 5 decide, you know, again on the Sterling,
 6 which wheelbase we wanted and where we
 7 wanted things positioned like what side
 8 of the truck to put the fuel tank on and
 9 batteries and little accessories.**

10 Q. Who conducted that negotiation on
 11 Trans-Spec's part and on Minuteman's
 12 part?

13 A. **It was just done by myself, and I would
 14 talk to Andy about it.**

15 Q. Andy Lind?

16 A. **Yes. For example, on the Sterling, the
 17 window crank was at the floor, so we put
 18 power windows. I sat in the truck and
 19 my head is resting against the window to
 20 open the window, so we put power windows
 21 and we wanted a few driver-creature
 22 features. Power mirrors we wanted so
 23 when a trailer truck backs in, you can
 24 adjust the mirror to see.**

1 **was in a Sterling truck?**

2 A. **Coincidentally, Colony Ford dropped a
 3 truck off and wanted us to try a new
 4 Sterling, and we had it. We didn't use
 5 the truck, but the truck was on our
 6 property and we checked it out really
 7 well.**

8 Q. **So another dealership called Colony
 9 delivered a Sterling truck to
 10 Trans-Spec's premises essentially in an
 11 effort to persuade you to buy trucks of
 12 that type?**

13 A. **Yes.**

14 Q. **Did this happen after your meeting with
 15 Bill Wicher that you discussed?**

16 A. **No. Before.**

17 Q. **You had already looked at this truck?**

18 A. **I had already seen this truck, yes.**

19 Q. **Had you had any conversations with
 20 anyone from Colony about buying trucks
 21 from Colony?**

22 A. **The possibility of it maybe.**

23 Q. **Had those discussions passed beyond just
 24 the fact that you were looking for**

1 about purchasing trucks from Colony, did
 2 that visit to Colony occur before your
 3 meeting with Bill Wicher?

4 **A. Yes.**

5 **Q.** Did you get any information concerning
 6 Sterling trucks during that meeting with
 7 Colony?

8 **A. I don't recall.**

9 **Q.** Did you discuss specifications for
 10 trucks that you were looking to buy at
 11 that meeting?

12 **A. I don't recall.**

13 **Q.** What went on at that meeting at Colony?

14 **A. I believe I spoke to a fellow by the
 15 name of Lee. His last name was Lee.**

16 **Q.** What did you say and what did he say?

17 **A. I told him what I liked and what I
 18 didn't like about the truck.**

19 **Q.** What did he say?

20 **A. I don't really remember.**

21 **Q.** Did you discuss the engine?

22 **A. Probably.**

23 **Q.** Do you remember what you said or what he
 24 said?

1 **A. No.**

2 **Q.** Do you remember what you told him you
 3 liked and didn't like about the truck
 4 that they had dropped off at your
 5 premises, at Trans-Spec's premises?

6 **A. I remember two things.**

7 **Q.** What do you remember?

8 **A. The window handle and the fact that you
 9 couldn't access the rear section of the
 10 engine.**

11 **Q.** Did you discuss with him the need that
 12 Trans-Spec had to trade in a large
 13 number of trucks?

14 **A. I did.**

15 **Q.** And did you and he come to an agreement
 16 at that meeting that the need for that
 17 trade in made it not feasible for you to
 18 make this purchase through Colony truck?

19 **A. I believe so.**

20 **Q.** Was that meeting the last one that you
 21 had with anyone from Colony truck
 22 related to this purchase?

23 **A. As I recall, I believe it was.**

24 **Q.** Colony Truck didn't give you any

1 information about the C-12 engine,
 2 correct?

3 **A. Correct.**

4 MR. GRUNERT: Let's mark
 5 this document I showed you a few minutes
 6 ago as the first exhibit.

7 (Document marked as

8 Exhibit No. 1

9 for identification.)

10 **Q.** Sir, when did you first see the document
 11 that we marked as Exhibit 1?

12 **A. Ten minutes ago maybe.**

13 **Q.** Is it your testimony that that document
 14 is not a copy of a specification
 15 proposal that Trans-Spec received from
 16 Sterling?

17 **A. From Colony Ford, you mean?**

18 **Q.** I'm asking whether that is a
 19 specification proposal Trans-Spec
 20 received from Sterling?

21 **A. I never received anything from Sterling
 22 like this.**

23 **Q.** Is that a specification proposal that
 24 Trans-Spec ever used as the basis for

1 negotiations with respect to acquisition
 2 of the trucks involved in this case?

3 **A. I -- they all look alike. I really
 4 can't tell if that is one of them or
 5 not.**

6 **Q.** Other than the line sheet relating to an
 7 AT9513, do you remember ever receiving a
 8 line sheet from Colony in connection
 9 with Trans-Spec's wish to acquire these
 10 22 trucks that we have been talking
 11 about?

12 **A. It's possible.**

13 **Q.** After the meeting with Bill Wicher and
 14 Mr. Medbery at 22 Eskow Road where you
 15 and Mr. Lind were present for
 16 Trans-Spec, what next occurred in
 17 connection with Trans-Spec's pursuit of
 18 the 22 trucks that it wanted to acquire?

19 **A. I really don't recall the next -- I
 20 believe it was actually specing out in
 21 detail the truck that we decided we
 22 wanted.**

23 **Q.** Was that done in a meeting up in Saint
 24 Thomas, Ontario?

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1 A. No.		
2 Q. Where was it done?		
3 A. I believe it was done -- it's pretty		
4 tough to say, but they generally start		
5 off with something like this and then I		
6 correct it.		
7 Q. By "this" you just referred to Exhibit		
8 1?		
9 A. Yes, Exhibit 1.		
10 Q. As a sort of illustrative type of		
11 document that you would receive?		
12 A. If I explained the basic truck that I		
13 wanted, then they would come up with --		
14 they would push a button and this would		
15 come out. I would make changes, and		
16 then they would print out another one,		
17 and then I'd make more changes, and then		
18 they would print out another one, and		
19 then they would continue to make changes		
20 until we get the exact truck that we		
21 want.		
22 Q. When you refer to "they," are you		
23 talking about Minuteman?		
24 A. Them, or any dealer.		
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1 Q. In connection with the particular trucks		
2 that bring us here today, however, are		
3 you talking about Minuteman?		
4 A. Yes.		
5 Q. Minuteman was supplying you with line		
6 tickets or line sheets?		
7 A. Right.		
8 Q. With proposed specifications, and you		
9 were then marking those up and giving		
10 them back to Minuteman?		
11 A. Yes. Little corrections. That's all.		
12 Q. You were actually exchanging hard copy		
13 paper in connection with this process?		
14 A. No. No.		
15 Q. How were you communicating with		
16 Minuteman?		
17 A. I would communicate with Don Medbery and		
18 make the changes and verbally tell him		
19 the changes over the phone.		
20 Q. So you would --		
21 A. Or in my kitchen. It could have been		
22 anyplace, but I wasn't submitting		
23 anything to him on paper.		
24 Q. You would receive a line sheet from		
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1 Minuteman. You would review it probably		
2 with Mr. Lind, maybe by yourself, and		
3 then you would call Mr. Medbery, and you		
4 would say, I have looked at this, and I		
5 want these changes, and you would		
6 itemize the changes?		
7 MS. REIMER: Objection		
8 as to form.		
9 A. I would really have to explain it to		
10 you. If I started with this Number 1,		
11 Exhibit Number 1, as a basic, it would		
12 say 18 9500, and I would say, No, I want		
13 an LT9522. And then it would go on to		
14 the setback for an axle, and I would		
15 say, Yes, standard location. And, of		
16 course, that is correct. And then you		
17 go down the entire list and then you		
18 would check the rear axle. Instead of		
19 40,000 pound, I want 46,000 pound.		
20 And then you continue		
21 on, and then he would give you a		
22 corrected version. This primarily is on		
23 the telephone, and he would send you a		
24 corrected version possibly by fax.		
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1 Q. And then you look at it		
2 again and get into the more detailed		
3 things like how long do you want your		
4 glad hand lines and such, and then		
5 finally you get -- it would just be a		
6 couple of faxes and a lot of phone calls		
7 to come up with the final figure.		
8 Once you get that		
9 settled, then he would submit it to		
10 Sterling or Freightliner, or whatever		
11 type of truck you are purchasing, for		
12 his concessions and come back with a		
13 better price than he would propose, and		
14 then they would give the better price,		
15 and then they would propose it to me.		
16 Q. Is that what happened in this case with		
17 respect to these 22 trucks?		
18 A. Yes. But it wasn't overnight. It was		
19 negotiations ongoing.		
20 Q. Did Trans-Spec keep any of those line		
21 sheets that Mr. Medbery sent to you,		
22 whether the original one or the		
23 corrected one, which you then used in		
24 discussing with him the detailed		

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1 warranty or Caterpillar service 2 agreement with respect to the engines in 3 the 22 trucks?		1 Q. When those trucks were delivered to 2 Trans-Spec, were they accompanied -- was 3 each truck accompanied by a Sterling 4 warranty?	
4 A. In brochures, it has something that 5 looks like that. It's all pretty 6 colors. That actual copy looks 7 different, so I couldn't say for sure if 8 that's it, if it was the actual one that 9 I'm picturing, but I have basically seen 10 extended warranty policies before.		5 A. No.	
11 Q. Other than the colors, does this 12 document look like the document that you 13 understood contained the warranty or the 14 service coverage on the engines that 15 were in the trucks that Trans-Spec 16 acquired?		6 Q. Did Trans-Spec ever receive a written 7 Sterling warranty with respect to those 8 trucks?	
17 A. I can't say that.		9 A. I don't recall.	
18 Q. Then I repeat the question. Have you 19 seen any document that was delivered to 20 Trans-Spec or signed by anyone on behalf 21 of Trans-Spec with respect to the 22 engines in the 22 trucks that Trans-Spec 23 acquired that provided warranty or 24 service coverage for them?		10 Q. When those trucks were delivered to 11 Trans-Spec, did Trans-Spec receive any 12 documents from Sterling relating to 13 them?	
1 A. The only one I recall is on the previous 2 trucks, not this particular 22 trucks. 3 I have seen them similar to that that 4 did come in an envelope directly to me 5 and I did sign them and return them to 6 Harry Calderbank specifically. He 7 obviously gave this to Andy Lind and not 8 me.	142	14 A. Title.	
9 Q. When were the 22 Sterling trucks that 10 are involved in this case delivered to 11 Trans-Spec?		15 Q. Did it receive operators' manuals?	
12 A. In December. I think they were put 13 in -- some were put in service the end 14 of December and some the beginning of 15 January 2000.		16 A. Yes.	
16 Q. Were those trucks actually delivered by 17 Minuteman to Trans-Spec's place of 18 business at Eskow Road in Worcester?		17 Q. Did it receive parts books?	
19 A. Some they delivered. Some I personally 20 picked up myself.		18 A. No.	
21 Q. Went down to the dealership and got 22 them?		19 Q. Did it receive maintenance manuals?	
23 A. Right. Drive a trade down and drive a 24 new one back.		20 A. No.	
		21 Q. You say you don't recall receiving 22 warranties with them?	
		23 A. In the owner's manual, it probably said 24 what the basic warranty was.	
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1 A. The only one I recall is on the previous 2 trucks, not this particular 22 trucks. 3 I have seen them similar to that that 4 did come in an envelope directly to me 5 and I did sign them and return them to 6 Harry Calderbank specifically. He 7 obviously gave this to Andy Lind and not 8 me.		1 Q. Was there a packet in each of those 2 trucks containing documents of various 3 types?	
9 Q. When were the 22 Sterling trucks that 10 are involved in this case delivered to 11 Trans-Spec?		4 A. I don't really recall. It's possible.	
12 A. In December. I think they were put 13 in -- some were put in service the end 14 of December and some the beginning of 15 January 2000.		5 Q. When Trans-Spec received those trucks, 6 did they receive an owner's manual or 7 owner's and maintenance manual with 8 respect to the engines?	
16 Q. Were those trucks actually delivered by 17 Minuteman to Trans-Spec's place of 18 business at Eskow Road in Worcester?		9 A. That's a good question. I really don't 10 recall that.	
19 A. Some they delivered. Some I personally 20 picked up myself.		11 Q. Did it receive a parts book with respect 12 to the engine?	
21 Q. Went down to the dealership and got 22 them?		13 A. I wouldn't think so.	
23 A. Right. Drive a trade down and drive a 24 new one back.		14 Q. Do you know whether it did or not?	
		15 A. No. It's possible, but I probably 16 wouldn't see anything like that.	
		17 MR. GRUNERT: Let's just 18 mark these documents as Exhibits 5 and 19 6.	
		20 (Document marked as 21 Exhibit No. 5 22 for identification.)	
		23 (Document marked as 24 Exhibit No. 6 for	